

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN OVERSIGHT,

CA No: 1:19-cv-02934-CRC

Plaintiff,

Washington, D.C.

vs.

Thursday, October 17, 2019
4:03 p.m.

U.S. DEPARTMENT OF STATE,

Defendant.

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TRANSCRIPT OF TELEPHONE CONFERENCE
HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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Lisa A. Moreira, RDR, CRR

Official Court Reporter

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Washington, DC 20001

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P R O C E E D I N G S

THE COURT: All right. Good afternoon, everyone.

MR. ABBUHL: Good afternoon, Your Honor.

MR. McGRATH: Good afternoon, Your Honor.

THE COURT: If you all could identify yourselves before you speak for the court reporter, please, I'd appreciate it.

Who do we have on for the plaintiff?

MR. McGRATH: Your Honor, this is Daniel McGrath for American Oversight; and I'm joined by Sara Creighton.

THE COURT: Okay. And for the Department of State?

MR. ABBUHL: This is Joshua Abbuhl, Your Honor; and with me is Elizabeth Shapiro.

THE COURT: Okay. Good afternoon, everyone.

MR. ABBUHL: Good afternoon.

THE COURT: First of all, I've had a chance to review the briefing that's come in so far at a pretty high level. I'd like to have you folks in next week, if we can manage that. I have time available Tuesday and Wednesday of next week; Tuesday at noon or 3:30 and pretty much all day Wednesday.

Mr. McGrath, what's your preference?

MR. McGRATH: Yes, Your Honor. This is Mr. McGrath. Tuesday or Wednesday works fine for plaintiff,

1 any of those times.

2 THE COURT: How about Wednesday at 10:00?

3 Mr. Abbuhl, does that work for you?

4 MR. ABBUHL: Your Honor, Wednesday at 10:00 I
5 certainly can do, if that works best for Your Honor. It is
6 not my preferred time. I'm available all day Tuesday and
7 Wednesday afternoon.

8 But, again, if 10:00 works best for Your Honor,
9 I'm happy to make that work.

10 THE COURT: Well, do you have a conflict, or is it
11 just inconvenient? If you have a conflict, I'm happy to
12 work around it.

13 MR. ABBUHL: I'm keyed up in an interview for
14 someone joining our office at 9:30.

15 THE COURT: Okay. Why don't we do Wednesday at
16 1:00 p.m.?

17 MR. ABBUHL: Thank you.

18 THE COURT: Thanks for calling in on short notice.
19 I obviously, as you all cited in the brief, handled the
20 *Protect Democracy* case involving the Syria air strikes last
21 year, so I'm generally familiar with the intersection of
22 preliminary injunction motions and FOIA. Having skimmed the
23 briefs, there are a couple of questions that I think may
24 bear on the ultimate resolution of the case that I'd like
25 for you all to at least be prepared to address by Wednesday.

1 The first is the extent to which State has begun
2 to process the complaint, the request. You know, do you
3 have a sense of what the universe of responsive records
4 might look like, particularly given that I would assume that
5 you all or State has undertaken to identify largely similar
6 records in response to congressional subpoenas covering the
7 same subject matter?

8 Can you tell me anything on that point now,
9 Mr. Abbuhl?

10 MR. ABBUHL: Your Honor, I can say that we have
11 passed out searches, but that no -- we haven't gotten the
12 results of that yet and that we're still crafting a general
13 search strategy. But I can certainly provide more color to
14 that by Wednesday.

15 THE COURT: Okay. So on Wednesday I'd like, you
16 know, as good an estimate as you can give me as to the
17 results of that search process, the number of responsive
18 documents that you think might be out there, and some sense
19 of how long it will take to process those documents.

20 The second area that I think is pertinent here is
21 the extent of the overlap between the plaintiff's two
22 requests and the requests that are pending from Congress by
23 subpoena and a sense of what privileges might be asserted to
24 the congressional subpoena and the overlap between those
25 privileges and the FOIA exemptions that we could expect to

1 see in response to the request. Do you follow me?

2 MR. ABBUHL: Yes, Your Honor, and I can certainly
3 get you as much detail as possible on Wednesday.

4 THE COURT: Okay.

5 And the other thing that occurred to me is in
6 response to sort of the issue as, you know, to what extent
7 whether -- or can we expect the requested documents to be
8 made public in any impeachment proceedings that may or may
9 not come to pass? So, in other words, you know, based on
10 past history, to what extent should we expect that the
11 factual basis for any articles of impeachment will be made
12 public; and likewise, to what extent, you know, based on,
13 you know, the Senate's past history, will evidence be made
14 public in any trial?

15 I know that's a very limited universe of past
16 experience, but, you know, if all of these records that are
17 called for could conceivably be or could be expected to be
18 in the public record in the process that may unfold over the
19 next few months, that affects the plaintiff's right to
20 relief, it seems to me. And obviously, you know, anything
21 else you all would like to argue on Wednesday.

22 And I will leave it to you folks whether you want
23 to file a supplement in advance of Wednesday or just to
24 handle it orally at the hearing. All right?

25 MR. McGRATH: Your Honor, this is Mr. McGrath.

1 THE COURT: Yes.

2 MR. McGRATH: We'll be filing our reply shortly --

3 THE COURT: Yes.

4 MR. McGRATH: -- and may try to address these
5 points in that reply.

6 THE COURT: Okay. And if there's anything that is
7 responsive to the points that we talked about today in the
8 reply, the Department should feel free to file a brief sur-
9 reply, if it so chooses, okay?

10 MR. ABBUHL: Thank you, Your Honor.

11 THE COURT: All right. Anything else while you've
12 got me?

13 MR. ABBUHL: Nothing from the government, Your
14 Honor. Again, this is Josh Abbuhl.

15 MR. McGRATH: Nothing for plaintiff, Your Honor.
16 This is Mr. McGrath.

17 THE COURT: Okay. Great. We will see you all
18 Wednesday at 1:00.

19 MR. ABBUHL: Thank you, Your Honor.

20 MR. McGRATH: Thank you, Judge.

21 THE COURT: Thanks. Have a good weekend.

22 (Whereupon the hearing was
23 concluded at 4:11 p.m.)
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25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, LISA A. MOREIRA, RDR, CRR, do hereby
certify that the above and foregoing constitutes a true and
accurate transcript of my stenographic notes and is a full,
true and complete transcript of the proceedings to the best
of my ability.

Dated this 18th day of October, 2019.

/s/Lisa A. Moreira, RDR, CRR
Official Court Reporter
United States Courthouse
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Washington, DC 20001